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followed it: *Wilkinson* v. *Johnson*, Id. 428; *Price* v. *Neal*, 3 Burr. 1354, and other cases, does not seem too strong.

The very mildest case involving this principle is that of *Canal Bank* v. *Bank of Albany*, 1 Hill 292; yet there it is held that *reasonable diligence* in giving notice is necessary.

TREAT, J., charged the jury as follows:—

Gentlemen of the jury:—The case you are trying turns mainly on the question of negligence. The fact that defendant is a corporation is in proof. You have then the plaintiff a corporation and the defendant a corporation.

The rule of law usually is, that where a certificate of deposit is issued by a bank, and it comes back to the bank issuing it with the endorsement of the depositor through the hands of *bonâ fide* innocent parties, the endorsement being forged, the bank paying the deposit certificate must lose it; for they are presumed to know the signatures of their customers, and the bank issuing the certificate has the means of verifying the signature.

This is a different case. Here was a person who could not write. The bank gave him the certificate and took his description. The ordinary mode, where a person signs by his mark, is to have him identified, so that a piece of paper coming back to the Keokuk Bank through respectable institutions, with the depositor's mark on the back of it witnessed by another party, the bank issuing the certificate would have the right to suppose that the bank sending the certificate had so identified the man making his mark. The witness's signature is proven. Mr. Brooks himself says he signed it. The simple fact, then, that the paper comes back to the bank at Keokuk with a mark witnessed by Mr. Brooks, which means that he knew Mr. Dunivan to be the person who made that mark, is sufficient to justify the Keokuk bank in paying the draft.

This, gentlemen, is all there is of the matter.

The jury found a verdict for the plaintiff.

Supreme Court of Mississippi.

JUSTINE MEZEIK *v.* PATRICK H. McGRAW.

Where a complainant in chancery amends his bill after answer filed the defendant is entitled to be informed of the amendment either by notice under rules of court or by service of process under the amended bill.

After such notice or service the complainant must have a decree that the amended bill be taken *pro confesso* for want of an answer before he can be entitled to a final hearing and decree.

A statute of Mississippi enacted that any promissory note or other contract for the payment of money executed in that state between March 1st 1862 and May 1st 1865, should be *primâ facie* payable in Confederate notes unless it appeared otherwise on the face of the contract. On a bill in chancery to foreclose a mortgage given to secure such a note and a decree *pro confesso* for want of an answer, there being no proof to show the note to be payable in other money, the reference to the master should have been to ascertain the value of Confederate notes.

APPEAL from the Chancery Court of Adams county.

Claudius Mezeik, on the 10th day of September, 1862, at the city of Natchez, in the county of Adams, Miss., made his promissory note for $2400, payable to Patrick H. McGraw one year from date, and on the 16th day of September, 1862, the said Claudius Mezeik and Justine his wife executed a deed of mortgage to Patrick H. McGraw on certain lands situate in said county of Adams, to secure the payment of said note. In the year 1865 the said Claudius Mezeik departed this life, leaving a will by which he gave to his said wife Justine Mezeik all his property, real and personal, and appointed her executrix of his said will.

The said Patrick H. McGraw filed his original bill of complaint to the October Term of the Chancery Court of said Adams county, 1867, against the said Justine Mezeik for a foreclosure of the said mortgage and the sale of the property therein specified for the payment of said note and interest. The defendant appeared and demurred to the bill for want of equity upon its face. Which demurrer was overruled by the court, and the defendant then answered the bill, setting up therein certain proceedings in the military court at Natchez as a defence to the bill. At the October Term 1868 of said court, by leave thereof, the complainant filed an amended bill, and without any legal notice thereof to the defendant, or service of process upon her to appear and answer the same, the court proceeded to a final hearing of the cause. Without an answer to the said amended bill, or taking the same *pro confesso* for want of an answer, the court ordered a reference to the clerk to take and state an account of the principal and interest on said note, and that he report the same to the court; and in compliance with said order of reference, the clerk reported that the sum of $3584.60 was due complainant of principal and interest on said note. To the report the defendant filed her ex-

ceptions, on the ground that the note was *primâ facie* evidence that the payment thereof was to be made in Confederate treasury notes, and that there was no proof of the value of Confederate treasury notes. The exceptions were overruled, the report confirmed, and the court decreed that the defendant pay to the complainant the amount then found due him within thirty days, and in default thereof that the property be sold and proceeds applied to the payment of the money found due to the complainant.

From this decree the defendant brought the cause to this court by writ of error.

The opinion of the court was delivered by

PEYTON, J.—The plaintiff in error makes several assignments of error, of which in the present attitude of the case it is necessary to notice only the second, fourth, and fifth, which are the following:—

2d. The court erred in proceeding to make an interlocutory order for an account, immediately after said bill was amended, without notice to said defendant or an opportunity for her to answer said bill as amended.

4th. The court erred in directing a reference to a commissioner to report an account of principal and interest due complainant upon the note and mortgage. The said note being dated 10th September 1862, and due at twelve months, was payable *primâ facie* in Confederate treasury notes, whereas said order of reference, if made at all, should have been made for the value of Confederate money with interest.

5th. The court erred in overruling the defendant's exceptions to the report of the commissioner, and also in confirming the report.

By the English Chancery Practice, if the amendment of the bill be before answer, it seems that no additional subpœna need be served upon the defendant, but he is entitled to the full time for answering from the when time he is served with notice after amendment. If the amendment be after answer, and a further answer be required, a subpœna must be served, but service on the defendant's solicitor is sufficient: Daniel's C. P. 27. Although it is the practice to call a bill altered an amended bill, the amendment is in fact esteemed but as a continuation of the original bill, and as forming a part of it for both the original bill and the

amended bill form but one record, so much so that when an original bill is fully answered, and amendments are afterwards made to which the defendant does not answer, the whole record may be taken *pro confesso* generally, and an order to take the bill *pro confesso* as to the amendments only will be irregular: 1 Daniel's C. P. 403.

Where the complainant amends his bill after answer, if a further answer to the bill becomes necessary, and is not waived, the defendant must put in a further answer to the amendment, or the complainant will be entitled to an order taking the whole bill as amended as confessed: *Trust and Fire Ins. Co.* v. *Jenkins*, 2 Paige 589, and *Sedder* v. *Stiles*, 16 Georgia 1. A rule of the chancery practice in this state requires that whenever the complainant shall file an amended bill or supplemental bill, he shall give notice thereof in writing to the opposite party or his solicitor within twenty days after the same shall be filed; and no decree *pro confesso* on such amended or supplemental bill shall be taken without proofs of such notice, unless process shall have been served upon the opposite party under the amended or supplemental bill. The amendments to the original bill were of such a character as to entitle the defendant to notice of them either in writing or by service of process. The court below therefore erred in proceeding to hear the cause without giving the defendant an opportunity to answer the amended bill, and even had she been notified of the amendments to the bill, it would have been error to proceed to a final hearing of the case without having previously taken the bill as amended as confessed, for want of an answer: *Beville* v. *McIntosh*, 41 Miss. 516. The Statute of 1867 provided, in all cases founded on any promissory note, open account, or other contract for the payment of money executed in this state after the 1st day of March 1862 and before the 1st May 1865, that fact shall be *primâ facie* evidence that the payment was to be made in Confederate treasury notes, unless the contrary appear on the face of said contracts. In this case the complainant's claim is founded on a promissory note executed in this state on the 10th day of September 1862, which is *primâ facie* payable in Confederate treasury notes; and as there was no rebutting or countervailing proof to show that the note was payable in anything else, the order of reference should have been for the value of Confederate treasury notes, with interest, from the date of

said note in United States currency; the court, therefore, erred in overruling the defendant's exceptions to the report of the commissioner and in confirming said report.

For these reasons the decree must be reversed, and cause remanded for further proceedings, in accordance with this opinion.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

COURT OF APPEALS OF NEW YORK.[1]

SUPREME COURT OF PENNSYLVANIA.[2]

Attorney.

Negligence—Statute of Limitations.—In an action against an attorney for neglect to collect, the statute begins to run from the time the attorney first became liable: *Rhines's Adm'rs.* v. *Evans*, 66 Pa.

An attorney gave a receipt for a note "for collection," the Statute of Limitations did not begin to run in his favor from the date of the note, but from a reasonable time afterwards for beginning proceedings: *Id.*

In the absence of peremptory instructions, the attorney is allowed a reasonable discretion. What is reasonable most frequently depends upon circumstances, and then is for the jury: *Id.*

Where the duty is immediate, the right of action arises, and the statute begins to run from the attorney's receipt of the money: *Id.*

Suit for neglect in not commencing proceedings was brought against an attorney seven years and five months after a note had been placed in his hands for collection. *Held*, as matter of law, that the statute was a bar: *Id.*

Bank.

Balance to Credit of Depositor—Appropriation of.—Chase having balances in a bank requested them to pay a debt for him, agreeing that if they would do so, his balances should be applied to the repayment. The bank paid the debt and Chase gave his note for the amount; it being agreed that the balances should be adjusted in a short time. Before they were adjusted the bank failed and went into the hands of a receiver. *Held*, that there had been an appropriation of the balances to the note, and that in a suit by the bank on the note the balances were to be deducted: *Chase* v. *Petroleum Bank*, 66 Pa.

The transaction was a contract, the appropriation of the balances being the consideration for the advance. After the advance by the bank, Chase could not have checked out the balances, nor could the balances have been attached by Chase's creditors: *Id.*

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[1] From S. Hand, Esq., Reporter; to appear in 44 N. Y. Rep.

[2] From P. F. Smith, Esq., Reporter; to appear in 66 Penna. State Rep.